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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/833,452 | 04/12/2001 | Randall Allen Vogel | AD6728 US NA | 3330 |

23906 7590 09/19/2006

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WILMINGTON, DE 19805

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| EXAMINER |
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JACKSON, MONIQUE R

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| ART UNIT | PAPER NUMBER |
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1773

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/833,452

Applicant(s)

VOGEL ET AL.

Examiner

Monique R. Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,7,9,11,12,14,16-18,20,21,43,45,47,49,54-81,83 and 84 is/are pending in the application.
- 4a) Of the above claim(s) 4,7,9,11,12,14,16-18,20,21,45,47,49 and 81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,43,54-80,83 and 84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>9/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/8/06 has been entered.

2. Claims 1, 3, 4, 6, 7, 9, 11, 12, 14, 16-18, 20-21, 43, 45, 47, 49, 54-81 and 83-84 are pending in the application. Claims 4, 7, 9, 11, 12, 14, 16-18, 20-21, 45, 47, 49 and 81 are withdrawn from consideration as being directed to non-elected species. The Examiner notes that Claim 81 was incorrectly labeled as "Previously Presented" instead of "Withdrawn". It is also further noted that withdrawn claims 4 and 81 refer to "the ionomer-polyamide" blend that has now been deleted from the parent claim.

Claim Objections

3. Claims 73-80 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 73-80 recite that the second layer is ionomer however all of the base claims have been amended to remove the ionomer-polyamide blend and hence all recite that the polymer is ionomer.

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Claim Rejections - 35 USC § 112

4. Claims 66-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 66-68 recite the limitation "the ionomer or ionomer-polyamide blend" however the base claims have been amended to remove the "ionomer-polyamide blend" limitation. Hence, there is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. Claims 1, 3, 6, 43, 54-80, 83 and 84 are rejected under 35 U.S.C. 102(b) as being anticipated by Flieger (USPN 5,789,048) for the reasons recited in the prior office action and restated below, wherein the Examiner notes that the newly added limitation in the instant claims with respect to the sheet or film being "a thermoformed film or sheet" provides no additional structural or material limitations to the invention with respect to the final product given that the term "thermoformed" is a process limitation and the final product remains the same sheet or film regardless of the method of formation. The Examiner also notes that the film taught by Flieger would inherently be capable of being thermoformed or "thermoformable".

Flieger teaches a film made from a random ionomer copolymer comprising 55-90% by weight ethylene and 10-45% by weight of an unsaturated monocarboxylic acid having 3-8 carbon atoms, preferably acrylic acid or methacrylic acid, the copolymer being neutralized from 0-40% with a metal ion such as lithium, sodium, magnesium, or zinc (Abstract; Col. 2, lines 41-53.) Flieger teaches that the film may be formed by any procedure known in the art including flat film extrusion and blown film extrusion and typically has a thickness of 70-125 microns, wherein the film may be formed of several coextruded layers, each layer providing different

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properties (Col. 2, lines 58-67.) Fleiger specifically teaches that the film may be formed by a black inner layer for ultraviolet light protection, a white middle layer for appearance, and a clear outer layer for printability and tackiness wherein Fleiger includes an example comprising a multilayer film formed from an ionomer copolymer comprising 80% ethylene and 20% methacrylic acid neutralized 35% with sodium ions, coextruded to form a 120 micron bag comprising a black pigmented inner layer 40 microns thick, a white pigmented middle layer 40 microns thick and a transparent outer layer 20 microns thick (Col. 3, lines 1-5; Ex. 2.) With regards to the flow properties and optical properties as instantly claimed, considering the multilayer film taught by Fleiger is produced by coextrusion to form a unitary film, the Examiner takes the position that “the flow properties” of the layers are inherently “matched” as instantly claimed and further considering the clear outer or surface layer taught by Fleiger comprises the same ionomer material as instantly claimed produced by the same method, the DOI and gloss would inherently fall within the instantly claimed ranges.

Response to Arguments

6. Applicant's arguments filed 9/8/06 with respect to Fleiger have been fully considered but they are not persuasive. The Applicant argues that Fleiger does not teach that the film or sheet is a “thermoformable” or “thermoformed” film or sheet, however, as discussed above, the Examiner takes the position that the term “thermoformed” is a process limitation wherein product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. “Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the

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product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process.” In re Thorpe, 227 USPQ 964,966 (Fed. Cir. 1985.) The Applicant also argues that Fleiger teaches that the example film comprises a clear outer layer for printability and tackiness, which according to the Applicant “does not seem to be an ionomer layer for ionomer layer is not known to be tacky.” However, as addressed in the prior office action and discussed above, Fleiger clearly teaches that the entire film was formed from an ionomer copolymer comprising 80% ethylene and 20% methacrylic acid neutralized 35% with sodium ions and clearly taught by Fleiger, coextruded to form a 120 micron bag wherein the inner layer included black pigment and the middle layer included white pigment while the outer layer remained transparent. Hence, Applicant’s arguments with respect to ionomer layers “not known to be tacky” are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Monique R. Jackson
Primary Examiner
Technology Center 1700
September 17, 2006